

E-132, 299/SA-91-251 ORDER DENYING PETITION FOR INTERIM SERVICE
RIGHTS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson
Cynthia A. Kitlinski
Dee Knaak
Norma McKanna
Patrice M. Vick

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Petition by
the City of Rochester to Provide
Interim Service to Various
Annexations and Newly Platted
Areas Within the City of
Rochester

ISSUE DATE: June 14, 1991

DOCKET NO. E-132, 299/SA-91-251

ORDER DENYING PETITION FOR
INTERIM SERVICE RIGHTS

PROCEDURAL HISTORY

On April 4, 1991 the City of Rochester filed a petition for interim authority under Minn. Stat. § 216B.44 (1990) to provide electric service to five subdivisions: Bandel Hills Fifth Subdivision, Lincolnshire Fourth Subdivision (Phase II), Northern Heights East Seventh Subdivision, Northern Slopes Sixth Subdivision, and Willow Hills Fourth Subdivision. These subdivisions had been annexed by the City and lay entirely within the assigned service area of People's Cooperative Power Association (People's or the co-op). In the alternative, Rochester asked the Commission to allow the City to design and construct the distribution system to serve the subdivisions and to require People's to use that system while compensation was being determined.

That same day, the City filed a petition under Minn. Stat. § 216B.45 (1990) asking the Commission to determine appropriate compensation for its permanent acquisition of these service rights and related facilities. This petition will be addressed by separate Order in docket number E-132, 299/SA-91-253.

On April 22, 1991 People's filed a response opposing the City's interim service request. On May 6, 1991 the Department of Public Service (the Department) filed comments recommending denial of the interim service petition.

The matter came before the Commission on May 21, 1991.

FINDINGS AND CONCLUSIONS

Legal and Factual Background

Under Minn. Stat. § 216B.44 (1990), a municipal utility may acquire the right to serve any area within its city limits upon payment of appropriate compensation.¹ The statute also provides that the Commission may allow the municipal utility to serve new customers in the area at issue if the Commission finds that new service extensions by the assigned utility would not be in the public interest.

The City of Rochester claimed that allowing People's to serve these subdivisions would not be in the public interest because the City eventually will acquire the right to serve them; it will then be faced with integration expenses which could and should have been avoided. The City also claimed it could extend service at lower cost than the co-op, largely because it has full time electric construction personnel on staff and the co-op does not. Finally, the City claimed it would be more efficient for the City to design and install the subdivisions' distribution system, using standard City materials, since the system eventually will belong to the City.

As an alternative to interim service rights, the City asked the Commission to allow Rochester to design and construct a distribution system to serve the subdivisions, and to require People's to use that system while compensation was being determined.

All parties agreed there were no material facts in dispute and contested case proceedings were unnecessary. The Commission agrees and so finds.

Commission Action

The Commission agrees with the co-op and the Department that allowing the assigned utility to serve these subdivisions will not contravene the public interest. In the absence of such a showing, the assigned utility is to continue providing service to the area, including new points of delivery, while compensation is being determined. Minn. Stat. § 216B.44 (1990).

¹ Under the statute, a municipal utility may serve without paying compensation if the area at issue is not receiving service from the assigned utility. The Commission has interpreted the phrase "receiving service" to include situations in which the assigned utility has facilities in place capable of providing service. The areas at issue are receiving service within the meaning of the statute, since they are surrounded by co-op facilities.

Integration Costs -- The integration costs alleged by the City are speculative at best. The City estimated these costs at \$130 to \$460 per lot, with two disclaimers: 1. These costs are difficult to estimate because they will depend on the configuration of the distribution system actually installed; and 2. The dollar amounts provided were developed for lots in other subdivisions, not the subdivisions at issue. The Commission concludes very little weight should be given to these cost figures. This is especially true in light of the co-op's pledge to remove poles and transformers installed to serve the subdivisions without charge and to work with the City to design a distribution system to minimize eventual integration costs.

Non-Standard Materials -- Neither is the Commission convinced that the use of co-op materials in the subdivisions' distribution system would pose significant problems if the City acquired the system. Although some materials used by the co-op are different from those used by the City, co-op materials are readily available and meet all applicable safety and performance standards. The co-op has stated its willingness to assist the City in acquiring materials, if necessary. The City has filed no evidence on the costs of maintaining or replacing co-op supplied materials. The Commission concludes the problems associated with future City use of co-op materials would be minor.

Outside Labor -- Similarly, the Commission does not believe the co-op's need to hire outside labor for some construction work will result in excessive costs. Again, the City has produced no actual cost comparisons. The co-op has stated, without contradiction, that all construction work except excavation for underground facilities is done by its own personnel, and that this practice is consistent with industry norms. The Commission concludes the co-op's occasional use of contract labor does not pose a serious cost issue.

The City's Commitment to Serve -- Finally, the Commission does not believe the City's intention to acquire permanent service rights to these subdivisions requires granting the City interim service rights. The firmest intentions can be frustrated by economic realities. Appropriate compensation for service rights to this area, or to any of the approximately 56 other areas the City intends to acquire, has not yet been determined. In compensation proceedings to date, the City has sponsored compensation figures dramatically lower than those put forward by other parties and awarded by the Commission.

It is not clear, then, that the City will in fact serve all areas within its city limits in the immediate future. The City could decide to defer service territory acquisitions or to adopt a gradual approach to such acquisitions, once the cost is known. In short, the City's ultimate acquisition of service rights to these subdivisions is not sufficiently certain or immediate to justify granting the City interim service rights.

The City's Request to Design and Construct the Distribution System -- The City has asked that People's be required to serve the subdivisions through distribution facilities designed, constructed, and owned by the City, to simplify eventual integration of the subdivision into the City's distribution system. The Commission rejected this proposal in an earlier case, involving the South Park Subdivision², and does so again for the same reasons.

The proposal has all the disadvantages of granting the City interim service rights, and introduces a new set of problems all its own. It would complicate liability in the event of accidents. It would create multiple opportunities for disputes about the design and construction of the distribution system. It would result in a morass of legal and policy issues, should the City ultimately decline to acquire permanent service rights and demand compensation for the system from People's.

The Commission will therefore not adopt Rochester's proposal that it be allowed to construct the distribution system for these subdivisions. The Commission does, however, urge both the City and the co-op to cooperate in designing and constructing the distribution system, to facilitate its eventual integration into the City's system.

ORDER

1. The City of Rochester's petition for interim service rights to the subdivisions at issue is denied.
2. People's Cooperative Power Association and the City of Rochester shall cooperate as much as possible in the design and construction of the distribution system to serve these subdivisions, to facilitate its eventual integration into the City's system.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)

² In the Matter of the Petition of the City of Rochester to Provide Interim Service to the Newly Platted Area Known as South Park Subdivision, E-132, 299/SA-90-853, ORDER DENYING PETITION FOR INTERIM SERVICE RIGHTS (January 8, 1991).